

REMARKS

This Amendment is being filed in response to the Office Action mailed on September 11, 2008, requiring an election of the claimed invention between:

Species I, identified to include claims 1 and 6-7;

Species II, identified to include claims 2, 5 and 9; and

Species III, identified to include claims 4, 8, 11-12, 14-16, 18-21 and 23-24.

Claims 3, 10, 13, 16-17 and 22 are indicated as being generic.

Applicant hereby elects with traverse Species III including claims 4, 8, 11-12, 14-16, 18-21 and 23-24.

It is Applicant's position that in fact each of the claims are not drawn to separate species, but are rather drawn essentially to a single embodiment defining the same essential features a device, system or method with a controller and mediator. The differences in the claims are related to various details of the controller and mediator. Accordingly, a restriction is not proper.

The MPEP in § 806.03 makes clear that "[w]here the claims of

an application define the same essential characteristics of a single disclosed embodiment of an invention, restriction therebetween should never be required." (emphasis provided) The MPEP goes on further to state the motivation for the above requirement is "because the claims are but different definitions of the same disclosed subject matter, varying in breadth or scope of definition." (Emphasis provided)

The MPEP in §803 further makes clear that a restriction between patentably distinct inventions is only proper if the inventions are independent or distinct as claimed and there is a serious burden on the examiner if a restriction is not required. A serious burden on the examiner is prima facie shown if the examiner shows by appropriate explanation of separate classification, or separate status in the art, or a different field of search (see, further MPEP §808.02). However, where "the classification is the same and the field of search is the same and there is no clear indication of separate future classification and field of search, no reasons exist for dividing among related inventions." (MPEP §808.02) Yet, the Office Action has done no more than to state

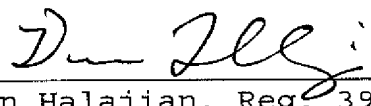
that they are separate and distinct without any suitable showing or explanation for this distinction.

Accordingly, it is respectfully requested that the restriction requirement be withdrawn and that the claims be examined on the merits.

In addition, Applicant denies any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicant reserves the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

Early consideration and action on the merits are solicited.

Respectfully submitted,

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